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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/936,012

09/05/2001

Stephane Auguste

11123.29USWO

9668

23552

7590

02/26/2004

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EXAMINER

YOON, TAE H

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,012

Applicant(s)

AUGUSTE ET AL.

Examiner

Tae H. Yoon

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1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 15-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 15-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claim 1 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 15. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 28, 30, 32 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 28 and 32 without one or more low molecular weight polyisobutylene is improper and confusing since said polyisobutylene is a mandatory component in claim 15.

The maximum total amount of poly(styrene/isoprene/styrene) copolymer and low molecular weight polyisobutylene in claims 30 (55 parts) is higher than that of claim 27 (40 parts), and thus claim 30 is improper and confusing.

The recited molecular weight in claims 34 is indefinite in not specifying a particular average molecular weight such as a number, weight or viscosity average molecular weight since the molecular weight of a polymer is an average. See col. 15, lines 11-21 of US Pat. 5,633,010.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 15-30 and 33-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auguste et al (US 6,051,748 or WO 98/10801) in view of Chen (US 5,633,010).

The examiner points out US 6,051,748 which is a counterpart of WO 98/10801.

Auguste et al teach a hydrophilic adhesive composition comprising a poly(styrene/isoprene/styrene) copolymer, a tackifier resin, an acrylate copolymer having Tg of less than -20°C , a plasticizer, a hydrocolloid and at least one antioxidant and its use as a dressing in abstract and examples. Said hydrocolloid is taught as carboxymethyl cellulose or its alkali metal salt at col. 3, lines 53-64 and in example 1. The instant acrylate copolymer and homopolymer are also taught at col. 4, lines 23-59 and in claims 3-14. Mineral oils are seen at col. 4, lines 1-22.

The instant invention further recites a low molecular weight polyisobutylene tackifier over Auguste et al who teach hydrocarbon resins as tackifiers at col. 3, line 31.

Chen teaches the instant polyisobutylene as a tackifier at col. 5, lines 11-21.

It would have been obvious to one skilled in the art at the time of invention to utilize the art well known polyisobutylene of Chen as a tackifier in Auguste et al since Auguste et al teach hydrocarbon resins as tackifiers and since said polyisobutylene is the well known hydrocarbon tackifier absent showing otherwise. Said polyisobutylene

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meets a low molecular weight polyisobutylene as well as a tackifying resin of claims 27 and 30 absent a particular tackifying resin.

Claims 1 and 15-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auguste et al (US 6,051,748 or WO 98/10801) in view of Chen (US 5,633,010), and further in view of Kubo et al (US 6,146,654).

The instant invention further recites a polybutene as a plasticizer over Auguste et al and Chen. However, Auguste et al teach employing any type of plasticizer at col. 4, lines 1-2, and Kubo et al teach said polybutene as a plasticizer at col. 4, lines 4-5.

It would have been obvious to one skilled in the art at the time of invention to utilize the art well known polybutene of Kubo et al as a plasticizer in Auguste et al and Chen thereof since Auguste et al teach employing any type of plasticizer and since said polybutene is one of the art well known plasticizer.

Claims 1, 15-33 and 35-40 are rejected under 35 U.S.C. 103(a) as obvious over Meyer et al (US 4,738,257) in view of Auguste et al (US 6,051,748 or WO 98/10801).

Meyer et al teach a barrier (adhesive) composition comprising a polyisobutylene, an elastomer and hydrocolloids in abstract and example 1. Said hydrocolloids comprise a mixture of sodium CMC and sodium polyacrylate (col. 5, lines 51-60). The use of a tackifier, oils such as paraffin or polybutylene (polybutene) oil and poly(styrene/olefin/styrene) copolymer is taught at col. 6, lines 49-68.

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The instant invention further recites an acrylate copolymer having Tg of less than -20°C and an antioxidant over Meyer et al. However, the use of said acrylate copolymer and antioxidant in adhesive compositions for wound care dressing is well known as taught by Auguste et al.

It would have been obvious to one skilled in the art at the time of invention to utilize the art well known acrylate copolymer having Tg of less than -20°C and an antioxidant taught by Auguste et al in Meyer et al since Meyer et al teach a sodium polyacrylate and since said sodium polyacrylate encompasses the instant acrylate copolymer and since the use of an antioxidant in adhesive compositions is a routine practice in the art.

Claims 1 and 15-40 are rejected under 35 U.S.C. 103(a) as obvious over Meyer et al (US 4,738,257) in view of Auguste et al (US 6,051,748 or WO 98/10801), and further in view of Chen (US 5,633,010).

The instant invention further recites a low molecular weight polyisobutylene tackifier over Meyer et al and Auguste et al.

Chen teaches the instant polyisobutylene as a tackifier at col. 5, lines 11-21.

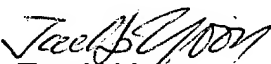
It would have been obvious to one skilled in the art at the time of invention to utilize the art well known polyisobutylene of Chen in Meyer et al and Auguste et al since Meyer et al teach a polyisobutylene and since said polyisobutylene is the well known tackifier absent showing otherwise. The utilization of different amounts of components depending on the desired cohesiveness would be a *prima facie* obviousness.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H Yoon whose telephone number is (571) 272-1128. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tae H Yoon
Primary Examiner
Art Unit 1714

THY/February 19, 2004